

REMARKS

The Examiner has required restriction in the above-identified application as follows:

- Group I: Claims 3-5, 8-11, 25-27, and 29-34, drawn to method of treatment using combination of anti-staphylococcal agent and β -lactam antibiotic;
- Group II: Claims 18, 26-33, drawn to method of treatment using combination of anti-staphylococcal agent and glycopeptide antibiotic.

Additionally, the Examiner has required the election of a single disclosed species as outlined on page 4 of the Official Action.

First, Applicants note that the claims designated in the Official Action as corresponding to “Group I” and “Group II” have been misidentified. Moreover, Claim 49 should have been included with the Group I claims. In addition, Claims 28 and 35-48 (rather than Claims 18, 26-33) are in fact drawn to a method of treatment using combination of an anti-staphylococcal agent and a glycopeptide antibiotic.

In responding to the restriction/election of species requirement, Applicants hereby elect, with traverse, Group I (drawn to a method of treatment using a combination of an anti-staphylococcal agent and a β -lactam antibiotic) and the species “a penicillin”.

The above election has been made with traverse. In particular, Applicants respectfully submit that examination of the subject matter of all currently pending claims would not pose an undue burden on the Examiner. Section 803 of The Manual of Patent Examining Procedure states that “[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” Applicants therefore respectfully request examination of all currently pending claims.

In responding to the restriction requirement, the Applicants take no position regarding

whether the claims of the various groups and species identified in the Official Action define distinct inventions.

CONCLUSION

Applicants submit that the application is now in condition for examination on the merits. Early notification of such action is earnestly solicited. If any issues remain which the Examiner feels may be best resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact Applicants' counsel, Christopher W. Raimund at (202) 861-3896.

Respectfully submitted,

DLA PIPER RUDNICK GRAY CARY U.S. LLP



Steven B. Kelber
Registration No. 30,073
Attorney of Record

1200 Nineteenth Street, N.W.
Washington, D.C. 20036-2412
Telephone No. (202) 861-3900
Facsimile No. (202) 223-2085

Christopher W. Raimund
Registration No. 47,258